

Office of Telecommunications & Regulatory Affairs

Legislative and Regulatory Update – May 11, 2011

Cable/Video Issues:

- **SB 1087 (Carona)** amends SB5 the state cable/video franchising bill to allow all incumbents to opt out of their city franchises. The bill also eliminates the current requirement to provide INet services at incremental costs and requires cities to report how they use the 1% PEG fee. Passage of the bill(s) would increase the City's cost for INet services beyond current incremental costs to include the value of the INet system and reporting requirements for how PEG fees are used would increase the City's cost to maintain the data and produce the reports. The bill passed the Senate April 6th and has been voted out of the House State Affairs Committee and referred to Calendars May 4th. **HB 256 (Hildebran)**, the companion bill, was left pending in committee.

When SB 1087 is taken up on the House floor, it is likely that an amendment will be proposed to add the 6 ¼% assessment provision on all video providers contained in HB 259. Passage of the amendment is uncertain.

- **HB 259 (Eiland)** imposes a 6 ¼% assessment on all video providers, including satellite service, and allows cable/video providers who now pay city franchise and PEG fees to deduct those fees from the assessment. The state would keep 75% of the assessment and 25% would be distributed to the cities on a prorated per subscriber basis. If satellite service in Austin is about 20% of total cable service, passage of the bill would be increase total cable franchise and PEG fees by about 5% (25% of the 20% of total cable service). The House State Affairs Committee held hearings on the bill March 30th where it is still pending.

Telecom Issues:

- **HB 2295(Hancock) & SB 980 (Carona)** prohibit any rate or contract regulation of Voice Over Internet Protocol (VoIP), and reduce PUC regulatory authority over telecommunications providers. The bills also prevent the PUC from reregulating telecom markets that have been deregulated, losing consumer protection if competition is lost in a deregulated market, and they reduce PUC authority to require mandatory telephone and local toll-free calling in metropolitan areas, limiting newly annexed areas to participate in the metro service options. (neutral impact on the City since it does not remove access line fees). SB 980 was passed by the Senate on April 7th and referred to the House State Affairs Committee with HB 2620.

The House passed SB 980 as amended May 4th. The amendment was to make sure that all video providers who currently pay franchise fees under PURA 66, continue to do so. Without this amendment, AT&T could have claimed its U-Verse video service is VoIP and not subject to video franchise fees. Melba Porteau, Houston assistant city attorney led the amendment effort.

- **HB 2295 (Frullo)** introduces two service plans into the state Universal Service Fund regulations, (no impact on the City), was passed by the House May 5th. It is the companion to **SB 712 (Hegar)**. Senate action on both bills is pending.
- **HB 1688 (Raymond)** removes the requirement for Certified Telecommunications Providers (CTPs) to pay for relocations required by road widening or straightening, increasing the City's cost to widen or straighten roads where CTP plant must be relocated. The bill is pending in the House State Affairs Committee and appears dead for this session.

FEDERAL ACTIVITY:

CAP Act

The 2011 Community Access Preservation ("CAP") Act (H.R. 1746) was introduced May 5th by Congresswoman Tammy Baldwin (D-WI) and Congressman Steven LaTourette (R-OH). The bill would remove the Federal prohibition of using PEG fees for operational expenses. We are working with state and national organizations to obtain support for the bill. Passage of the bill will allow the PEG fees paid to the City by cable/video providers to be used for operational expenses as well as capital expenses.

FCC Order on Pole Attachment Rules

On April 7th, the FCC issued rulings that require utilities to charge the same rate to telecom providers that they charge cable providers and that set maximum timelines for utilities to negotiate agreements, process pole attachment applications and perform the work needed to access the poles or conduit. The rule could reduce the pole attachment fees received by Austin Energy for pole attachments since SB 5 requires municipal electric utilities to set pole attachment rates no higher than is allowed by following the Federal regulations.

FCC to Issued Notice of Inquiry (NOI) April 20th with the implication of establishing that local governments are a "barrier to broadband deployment" that need to be torn down by the agency, and to make the federal government the arbiter of local rights-of-way practices and rights-of-way fees. In Austin, these fees are more than \$34 million annually, about 8 percent of total General Revenues. Several mayors, including Mayor Leffingwell, have sent letters to Vice President Biden with copies to Texas Congressional Delegation and to FCC Chairman Julius Genachowski expressing opposition to the NOI.

A major effort is underway to encourage cities to submit comments to document that city ROW management is not impairing broadband deployment.

Moratorium on Internet Taxes and Electronic Commerce

There has been no movement on **S.135 (John Ensign, R-Nevada)**: A bill to make the moratorium on Internet access taxes and multiple and discriminatory taxes on electronic commerce permanent. The current legislation banning Internet taxation will not expire until 2013.

Cell Tax Fairness Act

The bill sponsored by Zoe Lofgren D. Cal. prohibits any State or local jurisdiction from imposing a new discriminatory tax on or with respect to mobile services, mobile service providers, or mobile service property, during the 5-year period beginning on the date of enactment of this Act. Hearings are expected to be held March 29th in the Judiciary Committee. The bill would limit the City's authority to collect fees from the mobile service industry.

FCC Moves to Shift Phone Subsidy to Rural Broadband

The Federal Communications Commission on Tuesday moved to begin the process of overhauling the \$8 billion federal telephone subsidy to redirect funding to broadband service in rural areas. The notice of proposed rulemaking (NPRM), approved by a unanimous vote, also outlines a path for reforming the system of payments among telephone providers for exchanging local and long-distance calls, known as intercarrier compensation.

In the long term, the FCC is looking to consolidate the USF programs into a single Connect America Fund, which would shift funding toward broadband and away from telephone service without increasing the price tag of the fund. Transitioning to the Connect America Fund was a central piece of the national broadband plan the FCC issued last March.

COURTS:

Appeal of Ruling on Texas Cable Association and TWC Suit on SB 5

The Cable Assoc. and Time Warner Cable's Initial Brief to the Fed. 5th Cir on the SB 5 Appeal was filed Monday, Jan. 31, 2011.

The brief has two points of error, with multiple subparts. In point of error I, subpart C., on the Municipal Reliance interest in the unexpired local franchises that were grandfathered by SB 5 was challenged as being unlawful. Clarence West will be filing a Reply Brief on behalf of TCCFUI on the proper lawful use of the grandfathering in SB 5 to protect that Municipal Reliance/Grandfathering issue in SB 5 and in the lawful use of grandfathering in any future legislation involving municipal negotiated contracts. If the cable and satellite bills now pending in the Texas legislature are adopted, this suit would probably be dismissed.